

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RAYMOND LANG, #486632,

Petitioner,

v.

**DOUGLAS DRETKE, Director
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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Civil Action No. 3:05-CV-1499-L

ORDER

This is a habeas case brought under 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On September 8, 2005, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report") were filed, to which Petitioner filed no objections.

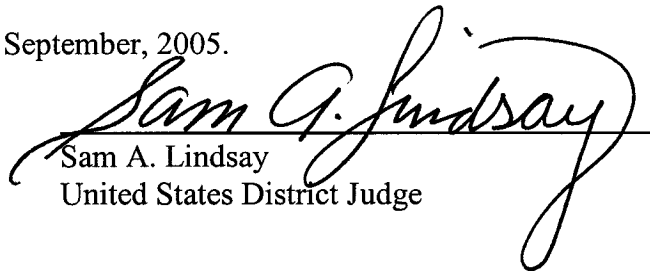
Petitioner seeks to challenge his 1988 conviction for aggravated sexual assault. He asserts that the trial court erred in denying his post-conviction motion for DNA testing because reasonable probability exists that the DNA test would prove his innocence.¹ The magistrate judge found that Petitioner's habeas action was a second or successive habeas petition. As such, the petition must be certified by a panel of the Fifth Circuit Court of Appeals, pursuant to 28 U.S.C. § 2244(b)(3)(A), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), before it can be

¹Petitioner filed his motion pursuant to Chapter 64 of the Texas Code of Criminal Procedure on August 6, 2001. The trial court denied the relief and the Eighth District Court of Appeals affirmed. *See Lang v. State*, No. 08-02-00292-CR (Tex. App. – El Paso, Aug. 19., 2004, pet. ref'd).

heard in the district court. The magistrate judge concluded, therefore, that the petition should be dismissed for want of jurisdiction.

After making an independent review of the pleadings, file and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions of the magistrate judge are correct. They are therefore accepted as those of the court. Accordingly, Petitioner's petition for habeas corpus is hereby **denied**, and this action is **dismissed without prejudice** to Petitioner's right to file a motion for leave to file a second or successive § 2254 petition with the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 2244(b)(3).

It is so ordered this 29th day of September, 2005.


Sam A. Lindsay
United States District Judge